simplification of procedure is by no means an unmixed blessing; and it should seem that the present English system of pleading, in which the scope of the general issue is restricted instead of being enlarged, is far preferable to our code pleading. The married woman's property Acts are fraught with sociological dangers, and the most sweeping of them are so recent that it is unsafe to boast much of the wisdom of such legislation.

On the whole, it is impossible for us to acquiesce in the view that no good thing has come to us from the Common Law; and we venture to protest against what appears to us to be an attempt to manipulate our legal history to fit a preconceived theory. Interesting as Mr. CAMPBELL'S work unquestionable is, and plausible as are his arguments, the American student of English law will detect the presence of many a lurking fallacy; and while he will recognize the value of a work which compels him to assume the defensive, he will nevertheless be able to justify the confidence which he feels in the correctness of his position.

AMERICAN RAILROAD AND CORPORATION REPORTS. Edited and Annotated by JOHN LEWIS. Vol. IV. Chicago: E. B. Myers & Co., 1892.

In this volume of upwards of eight hundred pages Mr. LEWIS gives to the profession in convenient form the most important corporation cases decided in Courts of last resort in the United States since January 1, 1891. The decisions here reported pertain to the law of railroads, municipal corporations, insurance, banking, carriers, telegraph and telephone companies, building and loan associations—in short, all the industrial enterprises which are carried forward through the instrumentality of the private corporation. Many of the decisions are followed by careful and elaborate annotations upon the point of law involved in the principal case. The work is provided with a digest-index, remarkably complete and accurate, containing references to both the reported cases and the notes.

The decisions which the editor has selected are, in

general, useful and important, and some of them will doubtless rank hereafter as "leading cases." Shipman *v.* Bank of State of New York, decided by the New York Court of Appeals, relates to the liability of a bank to its depositor for money paid out on a cheque drawn by the depositor, his clerk having stolen the cheque and forged the endorsement thereon. Cincinnati Inclined Plane Ry. Co. *v.* City and Suburban Telegraph Ass'n, from the Supreme Court of Ohio, investigates the relative rights of street railways and telegraph companies with respect to the use and occupation of public thoroughfares. The decision is to the effect that the prior grant of the use of a street to a telegraph company is subject to the right to establish and operate an electric railway thereon, inasmuch as the dominant purpose in the dedication and opening of streets is to facilitate public travel. Hence the telegraph company's claim to "ground circuit" is not superior, though prior. In Briggs *v.* Spaulding, the Chief Justice delivers the opinion of the Supreme Court of the United States. This was a bill framed upon the theory of a breach by the defendants, as directors, of their common-law duties as trustees of a financial corporation, and of breaches of special restrictions and obligations of the National Banking Act. The opinion discusses the personal liability of bank directors, and the Court decides, under the circumstances of this case, that there is no such personal liability on the part of the defendants since they had not been guilty of negligence or breach of duty. Three of the directors, however, had a narrow escape, as Mr. Justice HARLAN, with whom concurred Mr. Justice GRAY, Mr. Justice BREWER and Mr. Justice BROWN, filed a dissenting opinion on the ground that, as to the three, the evidence showed that they had not used the requisite degree of care, and that, with respect to the wrong-doing of a fellow official, "their eyes were as completely closed to what he did from day to day in directing the affairs of the bank as if they had deliberately determined not to see and not to know how he controlled its business." The case of Handley *v.* Stutz, the already

well-known decision of the same august tribunal, is also reported by Mr. LEWIS. This case may be said to represent the "high-water mark" of the doctrine that the unpaid capital of a corporation is a trust fund for the benefit of creditors. The Court held (to quote from Mr. LEWIS'S syllabus) that "the stockholders of the corporation, who voted to increase the capital stock eight hundred shares, and then distributed among themselves three hundred of those shares, without any consideration, must, at the suit of creditors of the corporation, which has become insolvent, respond for the par value of the shares, though they never expressly agreed to pay for the same, and though the stock is expressly declared to be fully paid and free from all claims or demands on the part of the corporation." The severity of the decision on this point is somewhat tempered by the refusal of the Court to enforce the same rule with respect to those who had purchased the new stock together with the bonds of the corporation in the market as the highest bidders; it being conceded that, but for the stock bonus, the bonds could not have been negotiated. But in any view the decision is an extreme one, and it is interesting to observe its relation to Wood *v.* Dummer—the case in which Mr. Justice STORY originally propounded the trust fund doctrine. The use of the term "trust fund" is rather an absurdity in this connection, for the distinctive attributes of the trust fund are absent; and, at the same time, the true equities of a case could be better worked out by treating the stockholders as those who have made representations on the faith of which others have acted, and who must, therefore, be compelled to make them good. This is not the only instance in which Mr. Justice STORY must be made responsible for much that is absurd in the law in consequence of his adoption of plausible but dangerous grounds on which to attain a sound conclusion which might have been reached on sound principle. Witness his "general commercial law" doctrine in Swift *v.* Tyson and the confusion which has resulted from the refusal of the Federal Courts to be ruled by the provisions of the Judiciary Act with respect to the laws

of the States. And, indeed, as the reader will recollect, the bulk of the opinion in Swift *v.* Tyson is *dictum*, and against Mr. Justice CATRON recorded a vigorous dissent for the expressed reason that the point had never been raised by the record, argued by counsel or even mentioned in connection with the case until Mr. Justice STORY read his opinion.

One of the evil results of the trust fund explanation is seen in the refusal in Handley *v.* Stutz, following Sawyer *v.* Hoag, to permit one of the stockholders to set off his own claim upon the corporation against the claim of the creditors. This point is not noted by Mr. LEWIS in his syllabus; it is of such importance that it deserves specific mention. To this case Mr. LEWIS has added a valuable annotation, containing a large collection of the authorities upon the trust fund doctrine. Among them we notice a case already referred to—Wood *v.* Dummer—cited as Ward *v.* Dummer.

Mr. LEWIS'S volume is, on the whole, well worth attentive perusal, and to the lawyer with a brief to write it will prove only less useful than to the student who desires to keep abreast of the development of corporation law.

NOTES AND COMMENTS.

[The Editors are not responsible for the opinions expressed in this Department.]

THE HOMESTEAD RIOTS.

The recent disturbances at Homestead have excited some little inquiry, as indicated by communications in the public prints, as to the extent of an owner's right to repossess himself of his property by force without recourse to law, where taken possession of and held with force and threats by persons until then in his employ. Such right undoubtedly existed at common law for a long period, and extended to any disseisin by whomsoever effected. It was termed the right of entry, and was founded on the necessities of the case, which might often require, in justice to